

Filed for intro on 01/17/2002
HOUSE BILL 2418 By
Arriola

SENATE BILL 2433
By Haynes

AN ACT to amend Tennessee Code Annotated, Title 4; Title 62,
Chapter 13 and Title 62, Chapter 19, relative to certain
regulated professions.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 4-3-1304, is amended by deleting
items (1) and (14) in their entirety and by adding a new item thereto, as follows:

() Real estate and auctioneer commission;

SECTION 2. (a) Tennessee Code Annotated, Section 4-29-226(a), is amended by
deleting items (35) and (37) in their entirety.

(b) Tennessee Code Annotated, Section 4-29-225(a), is amended by adding a new item
thereto as follows:

() Real estate and auctioneer commission;

SECTION 3. Tennessee Code Annotated, Section 62-13-201, is amended by deleting
such section in its entirety and by substituting instead the following:

Section 62-13-201.

(a) There is hereby created the Tennessee real estate and auctioneer
commission, hereinafter referred to as the "commission," which consists of nine (9)

members appointed by the governor, each of whom shall be a resident of this state and shall possess good moral character.

(b) Five (5) of the members shall each have been principally engaged as a licensed broker or affiliate broker in this state for at least five (5) years prior to the date of such member's appointment and shall be of recognized business standing.

(c) Three (3) of the members shall each have been principally engaged as a licensed auctioneer in this state for at least five (5) years prior to the date of such member's appointment and shall be of recognized business standing.

(d) The remaining member of the commission shall be a person who is not engaged in or conducting the business, or acting in the capacity of a real estate broker or affiliate broker; in the business of real estate financing or development, or the business of auctioneering.

(e) Initially, the governor shall appoint five (5) members for a term of three (3) years and four (4) members for a term of four (4) years. Thereafter, all such members shall be appointed for terms as provided in subsection (f).

(f)

(1) Every member of the commission shall be appointed for a term of five (5) years and until a successor is appointed and qualifies by subscribing to the constitutional oath of office, which shall be filed with the secretary of state.

(2) Any vacancy occurring on the commission shall be filled by the governor for the unexpired term.

(3) No members shall be appointed to succeed themselves for more than one (1) full term.

(4) The governor may remove any member of the commission for misconduct, incompetency, or willful neglect of duty.

(5) Three (3) members shall be appointed from the eastern grand division, three (3) members shall be appointed from the middle grand division and three (3) members shall be appointed from the western grand division. Notwithstanding any provision to the contrary, nothing in this chapter shall prevent any commissioner who was appointed prior to the effective date of this act from being reappointed.

(6) In making appointments to the commission, the governor shall strive to ensure that at least one (1) person serving on the commission is sixty (60) years of age or older and that at least one (1) person serving on the commission is a member of a racial minority.

SECTION 4. Tennessee Code Annotated, Title 62, Chapter 13, is amended by adding Sections 5 through 24 of this act as a new part thereto.

SECTION 5. As used in this part:

(1) "Apprentice auctioneer" means any individual who, for compensation or valuable consideration, or otherwise, is employed, directly or indirectly, by an auctioneer to deal or engage in any activity defined in subdivision (3);

(2) "Auction" means a sales transaction conducted by means of oral or written exchange between an auctioneer and members of the audience, which exchange consists of a series of invitations for offers for purchase of goods or real estate made by the auctioneer and offers to purchase made by members of the audience culminating in the acceptance by the auctioneer of the highest or most favorable offer made by a member of the participating audience;

(3) "Auctioneer" means any individual who, for a fee, commission, or any other valuable consideration, or with the intention or expectation of receiving the same, by the means or process of auction or sale at auction, offers, negotiates, or attempts to negotiate a listing contract, sale, purchase, or exchange of goods;

(4) "Commission" means the Tennessee real estate and auctioneer commission;

(5) "Continuing education" means six (6) hours each renewal period;

(6) "Firm" means any person who, as part of such person's business, arranges, manages, sponsors, advertises or carries out auctions;

(7) "Goods" means any chattels, merchandise, real or personal property, or commodities of any form or type which may lawfully be kept or offered for sale; and

(8) "Person" includes an individual, association, partnership, corporation, and the officers, directors and employees of a corporation.

SECTION 6.

(a) It is unlawful for any person to:

(1) Act as, or advertise or represent to be, an auctioneer, apprentice auctioneer, or firm without holding a valid license issued by the commission under this chapter, or prior state law; or

(2) Conduct, or offer to conduct, an auction of real property unless such person is duly licensed as an auctioneer, and as a broker or affiliate broker under the provisions of the Tennessee Real Estate Broker License Act of 1973, compiled in parts 1-5 of chapter 13 of this title. This subdivision shall not be construed to require ringpersons or other persons not vocally conducting an auction to be duly licensed as auctioneers, nor to be duly licensed under chapter 13 of this title unless such ringpersons or other persons act as an affiliate broker or broker within the meaning of chapter 13 of this title.

(b) All auctions arranged by or through a firm shall be conducted exclusively by individuals who are licensed as auctioneers under this chapter.

SECTION 7. The provisions of this chapter do not apply to:

(1) Any person acting as a receiver, trustee in bankruptcy, guardian, administrator, executor, or other such person acting under order of any court;

(2) Any trustee acting under a trust agreement, deed of trust, or will, or any secured party selling collateral after default by a debtor in accordance with title 47, chapter 9;

(3) Any auction conducted by or under the direction of any governmental entity, or pursuant to any judicial order or decree;

(4) Any auction conducted by or on behalf of any political party, church, or charitable corporation or association, if the individual conducting the sale receives no compensation and does not, by advertising or otherwise, hold such individual out as available to engage in the sale of goods at auction;

(5) Any person performing acts in the regular course of, or as an incident to, the management of, and investment in, property owned or leased by such person, if such property was not acquired for the purpose of resale. When a sales tax, as provided by title 67, chapter 1, is not levied upon the sale of personal property, there is a presumption that such personal property was purchased for the purpose of resale;

(6) Any auction conducted for the sale of livestock sponsored through or in cooperation with the state department of agriculture and/or the University of Tennessee extension service;

(7) Any auctioneer conducting a sale of tobacco at or for a warehouse operated pursuant to title 43, chapter 19; or

(8) Any livestock auction sale regulated by the United States department of agriculture packers and stockyards administration, if the sale uses:

(A) The shipper's proceeds account required by federal regulations; and

(B) A Tennessee licensed auctioneer.

SECTION 8.

(a) The commission has the authority to establish continuing education requirements and standards for individual licensees. The provisions of this subsection shall apply only to those licensees who received their licenses after January 1, 1985.

(b) An auctioneer who has reached sixty (60) years of age and has been licensed as an auctioneer for ten (10) years or longer is exempt from continuing education requirements.

(c) No apprentice shall be exempt from continuing education requirements.

SECTION 9.

(a) The executive director of the commission shall keep a register of all applicants for license, showing for each the date of application, name, place of business, place of residence, and whether the license was granted or refused.

(b) The register shall be prima facie evidence of all matters recorded therein.

SECTION 10.

(a) Any individual who desires a license as an apprentice auctioneer shall submit an application to the commission on the prescribed form. The application shall be accompanied by a nonrefundable examination fee as set by the commission, and satisfactory proof that the applicant has:

(1) Reached at least eighteen (18) years of age; and

(2) Successfully completed eighty (80) hours of classroom instruction in the fundamentals of auctioneering at an auction school accredited by the commission.

(b) Any individual who desires a license as an auctioneer shall submit an application to the commission on the prescribed form. The application shall be accompanied by a nonrefundable examination fee as set by the commission, and satisfactory proof that the applicant has:

(1) Reached at least eighteen (18) years of age;

(2) Served as an apprentice auctioneer under the supervision of a licensed, full-time auctioneer for a period of two (2) years;

(3) Successfully completed, in addition to the education required by subdivision (a)(2), thirty (30) hours of more rigorous classroom instruction in an auctioneering-related subject approved by the commission; and

(4) Obtained a high school diploma or general equivalency diploma (GED).

(c) The commission may require such other proof, through the application or otherwise, as it shall deem desirable as to the honesty, trustworthiness, integrity, reputation, and competency of the auctioneer or apprentice auctioneer applicant.

(d) Any person who meets the requirements of subsections (a)-(c) is entitled to an examination prescribed by the commission to determine such person's qualifications. The examination shall include, but not be limited to, reading, writing, spelling, elementary arithmetic, elementary principles of land economics, ethics, the law of this state relating to bulk sales, auctions and brokerage, and the provisions of this chapter. The examination for an auctioneer's license shall be of more exacting nature and scope than the examination for an apprentice auctioneer's license.

(e) Any applicant who fails an examination must pay a fee as set by the commission for each reexamination.

(f) The commission shall issue to a qualified applicant a license and pocket card upon receipt of the appropriate fee as set by the commission. The license shall be conspicuously displayed at all times in the office of the licensee.

(g) Except as provided in this part, every auctioneer licensed hereunder shall maintain a place of business in this state at a firm that has been duly licensed by the commission.

(h) (1) A person who desires a license for a firm shall submit an application to the commission on the prescribed form. A firm license must be issued in the name of the firm with a specific person acting as principal and holder of a valid auctioneer's license. The application shall be accompanied by a nonrefundable examination fee as set by the commission, and satisfactory proof that:

(A) The applicant has reached at least eighteen (18) years of age;

(B) The applicant, if not a holder of a principal auctioneer's license, has completed thirty (30) hours of rigorous classroom instruction in an auctioneering-related subject approved by the commission; and

(C) The applicant has obtained a high school diploma or general equivalency diploma (GED).

(2) The commission may require such other proof, through the application or otherwise, as it shall deem desirable as to the honesty, trustworthiness, integrity, reputation and competency of the auctioneer or apprentice auctioneer applicant.

(3) Any person who meets the requirements of subdivisions (h)(1) and (h)(2) shall be entitled to an examination prescribed by the commission to determine such person's qualifications. The examination shall include, but shall not be limited to, reading, writing, spelling, elementary arithmetic, elementary principles of land economics, ethics, the law of this state relating to bulk sales, auctions, and brokerage, and the provisions of this chapter.

(4) The examination for a firm license shall be of a more exacting nature and scope than the examination for an apprentice auctioneer's license, except that a nonauctioneer applying for a firm license shall not be required to take the oral part of the auctioneer's test consisting of actual bid calling.

(5) Any applicant who fails an examination must pay a fee as set by the commission for each reexamination.

(6) The commission shall issue to qualified applicants a license and pocket card upon receipt of the appropriate fee as set by the commission. The firm license shall be conspicuously displayed at all times in the office of the licensee.

(7) Any person currently holding a valid auctioneer firm license may renew the same by filing an application for renewal and paying the required fee before the expiration date of such firm license.

(8) If the applicant for a firm license maintains more than one (1) place of business within the state, the applicant shall apply for and obtain an additional firm license for each branch office.

(9) A firm license shall automatically be suspended if no licensed auctioneer is engaged in business therein. Such license may be reinstated by the commission for the unexpired term upon proof that a duly licensed auctioneer has been affiliated with the firm.

(10) Any person in this state who for a fee is in the business of managing auctions to the extent such person is responsible for the advertising, consignments, promotion and/or distribution of funds must hold a valid firm license.

(11) All contracts for services to be performed by an auction firm, except an auto auction as defined in § 55-17-102(2), must be negotiated for and signed by an auctioneer who is a member of the firm or by the auctioneer's attorney.

(i) All licenses issued by the commission shall expire two (2) years from the original date the license was issued. Each license must be renewed on or before its expiration date.

(j) If a licensee fails to renew a license on or before its expiration date, the commission may, in its discretion, renew the license upon application within two (2) months thereafter. The application shall be accompanied by the prescribed fee plus a penalty as set by the commission. Any person wishing to renew a license later than two (2) months after its expiration shall reapply for licensure; provided, that the commission may, in its discretion:

(1) Waive reexamination or additional education requirements for such an applicant; or

(2) Reinstate a license subject to the applicant's compliance with such reasonable conditions as the commission may prescribe, including payment of an additional reasonable fee to be set by the commission.

(k) When fees are remitted by mail to the commission, the date of payment shall be determined by the official postmark of such mail.

(l) When an apprentice auctioneer's employment with an auctioneer is terminated for any reason, the auctioneer shall immediately deliver or send by registered mail the apprentice auctioneer's license to the commission. Such apprentice auctioneer shall not engage in any activity defined in Section 5 of this act until the apprentice auctioneer receives a new license and pocket card, for the unexpired term, bearing the name and address of the new employer. The fee for such new license and pocket card shall be set by the commission.

(m) No more than one (1) license shall be issued to any apprentice auctioneer to be in effect at any one (1) time.

(n) No license issued by the commission shall authorize the licensee to engage in business at any location other than that set forth on the license. A licensee shall immediately notify the commission in writing in the event of a change of business location. The written notice shall be accompanied by the current license and pocket card, and a fee as set by the commission.

(o) Notwithstanding the provisions of subdivision (b)(2), any individual who otherwise would qualify for the auctioneer's examination by January 1, 1984, need complete only one (1) year of apprenticeship in order to be eligible for such examination.

(p) Auctions for the sale of registered livestock must be conducted by a licensed auctioneer. Such auctioneer shall be exempt from the responsibilities of issuing closing statements and disbursing funds if such responsibilities are performed by a duly chartered livestock association or livestock breed association.

(q) An apprentice auctioneer may be employed by a licensed auctioneer who is not designated as the apprentice's sponsor, upon receiving written permission from the apprentice's sponsor and notifying the commission of such employment in the proper form and manner as prescribed by the rules of the commission. An auctioneer employing an apprentice who is not under that auctioneer's sponsorship shall be responsible for the actions of the apprentice while

under that auctioneer's employment and the sponsor shall be responsible for the actions of the apprentice at all other times.

(r) The commission may deny any applicant for an apprentice, auctioneer, or firm license the right to take an examination for a period up to two (2) years if the applicant is found by the commission to have conducted business within this state as an apprentice auctioneer, auctioneer, or firm owner without first having been properly licensed.

SECTION 11.

(a) The commission may, upon its own motion, and shall, upon the verified complaint in writing of any person, hold a hearing as hereinafter provided and investigate the actions of any auctioneer, apprentice auctioneer, or any person who shall assume to act in either such capacity; provided, that such complaint with the evidence, documentary or otherwise, presented in connection therewith, makes out a prima facie case.

(b) The commission may suspend, revoke or refuse to renew any license issued under this chapter where such license has been obtained by false or fraudulent representations, or for any of the following causes:

- (1) Making any substantial misrepresentation;
- (2) Pursuing a continued and flagrant course of misrepresentation or making false promises through agents or advertising or otherwise;
- (3) Accepting valuable consideration as an apprentice auctioneer for the performance of any of the acts specified in this chapter, from any person, except the licensee's employer auctioneer;
- (4) Failing to account for or remit, within a reasonable time, any money belonging to others that comes into the licensee's possession, commingling funds of others with the licensee's own, or failing to keep such funds of others in an escrow or trustee account;
- (5) Paying valuable consideration to any person for services performed in violation of this chapter;

(6) Being convicted in a court of competent jurisdiction of this or any other state, or of the United States, of a criminal offense involving moral turpitude or a felony;

(7) Violating any provision of this chapter, or any rule or regulation duly promulgated thereunder;

(8) Failing to furnish voluntarily to all interested parties, at the time of execution, copies of all written instruments prepared by the auctioneer or apprentice auctioneer;

(9) Failing prior to the sale at public auction to enter into a written contract with the owner or consignee of any property to be sold, containing the terms and conditions upon which such licensee receives the property for sale;

(10) Engaging in the business of auctioning real property without being duly licensed as a broker or affiliate broker under the provisions of this chapter;

(11) Knowingly using false bidders, cappers or pullers;

(12) Any conduct of any auctioneer which demonstrates improper, fraudulent, incompetent or dishonest dealings; or

(13) Violating any provision of title 55, chapter 17, or any rule duly promulgated thereunder, pertaining to the sale or auction of motor vehicles.

(c) The affirmative vote of a majority of the commission shall be necessary to revoke or suspend a license.

(d) An auctioneer or apprentice auctioneer may retire such auctioneer's or apprentice auctioneer's license by making such request in writing and paying the appropriate fees set by the commission. The written request must be accompanied by the license certificate and pocket card. The retiree shall be responsible for notifying the commission of any change in address. Only licenses that are current and in good standing with the commission may be retired.

SECTION 12. The commission is declared to be a quasi-judicial body and the members or its employees thereof are granted immunity from civil liability when acting in good faith and in the performance of their duties as described in this chapter.

SECTION 13. Whenever any person claiming to have been injured or damaged by the gross negligence, incompetency, fraud, dishonesty or misconduct on the part of any licensee following the calling or engaging in the business herein described files suit upon such claim against such licensee in any court of record in this state and recovers judgment thereon, such court may as part of its judgment or decree in such case, if it deems it a proper case in which so to do, revoke the defendant's license, which shall not be reissued to such licensee except upon unanimous vote of all members of the commission in favor of such reissuance, and only then after the lapse of a period of ninety (90) days from the date of such revocation.

SECTION 14. Any auctioneer licensed hereunder may conduct auctions at any time or place in this state. The licensee shall, upon request, furnish to the chief of police or sheriff of the city or county where the auction is to be held a list of properties to be sold twenty-four (24) hours prior to the auction.

SECTION 15.

(a) There is hereby established within the general fund, an auctioneer education and recovery account, hereinafter the "account." All funds received by the commission under this section shall be deposited into the account and held solely for the purposes of this section. The commission shall maintain a minimum balance of one hundred fifty thousand dollars (\$150,000) in the account.

(b) Moneys within the account shall be invested by the state treasurer in accordance with the provisions of § 9-4-603 for the sole benefit of the account.

(c) (1) No new auctioneer, apprentice auctioneer or firm license shall be issued unless the applicant pays, in addition to the license fee, a fee of fifty dollars (\$50.00) or such lesser amount as the commission may by rule establish for deposit into the account.

(2) No renewal auctioneer, apprentice auctioneer or firm license shall be issued unless the applicant pays, in addition to the renewal fee, a fee of fifty dollars (\$50.00) or such lesser

amount as the commission may by rule establish for the purpose of ensuring that the required minimum balance is maintained in the account.

(d) Any person may, by order of any court of competent jurisdiction, recover from the account actual or compensatory damages (not including interest and costs) resulting from any violation of this chapter, or of any rule promulgated thereunder, committed by a licensee on or after June 30, 1987; provided, that:

(1) The liability of the account shall not exceed ten thousand dollars (\$10,000) per transaction, regardless of the number of persons aggrieved;

(2) The liability of the account for the acts of a licensee, when acting as such, shall be terminated upon the issuance of court orders authorizing payments from the account for judgments, or any unsatisfied portion of judgments, in an aggregate amount of twenty thousand dollars (\$20,000) on behalf of such licensee;

(3) A licensee acting as such shall have no claim against the account; and

(4) A bonding company not involved in an auction shall have no claim against the account.

(e) When any aggrieved person commences action for a judgment which may result in collection from the account, such person shall promptly notify the commission to this effect in writing, by certified mail, return receipt requested. The commission may, subject to the approval of the attorney general and reporter, take any action it may deem appropriate to protect the integrity of the account.

(f) When any aggrieved person obtains a valid judgment respecting which recourse against the account is permitted under this section and all or any part of the judgment is unpaid sixty (60) days after the date thereof, such person may, upon termination of all proceedings, including reviews and appeals in connection with the judgment, apply to the court in which the judgment was entered for an order directing payment from the account of the amount unpaid upon the judgment. Upon determination of the court that the judgment or any part thereof is

unpaid, the court shall enter an order directing the commission to make payment from the account to satisfy such judgment.

(g) If the commission, pursuant to a court order, pays any amount from the account on behalf of a licensed auctioneer or apprentice auctioneer, the commission may, in its discretion, suspend or revoke the license of such auctioneer or apprentice auctioneer. No auctioneer or apprentice auctioneer whose license is revoked under this subsection shall be eligible to apply for a new license until such person has repaid in full the amount paid from the account on such person's behalf, plus interest at the effective earnings rate for the account for the period such claim is unpaid.

(h) When, upon the order of the court, the commission has paid from the account any sum to the judgment creditor, the commission shall be subrogated to all of the rights of the judgment creditor in the judgment. Any amount recovered by the commission on the judgment shall be deposited to the account. If the total amount collected on the judgment by the commission exceeds the amount paid from the account to the original judgment creditor, plus interest and the cost of collection, the commission may elect to pay such overage, or reassign the remaining interest in the judgment, to the original judgment creditor. The payment or reassignment to the original judgment creditor shall not subject the account to further liability for payment to the original judgment creditor based on that transaction or judgment. Any costs incurred by the commission in attempting to collect judgments shall be paid from the account.

(i) If, at any time, the money deposited in the account is insufficient to satisfy any duly authorized claim or portion thereof, the commission shall, when sufficient money has been deposited in the account, satisfy such unpaid claims or portions thereof in the order that they were originally filed, plus interest at the effective earnings rate for the account for the period such claim is unpaid.

(j) The failure of an aggrieved person to comply with all of the provisions of this section constitutes a waiver of any rights hereunder.

(k) It is unlawful for any person to file or cause to be filed with the commission any notice, statement, or other document required under this section which is false or contains any material misstatement of fact.

(l) (1) The commission may, in its discretion, utilize any return on investment of funds in the account and any balance in the account over one hundred fifty thousand dollars (\$150,000) to:

(A) Sponsor, conduct, or assist in conducting, education, training or research designed to improve the competence, effectiveness, or professionalism of licensees, the members of the commission, or its staff;

(B) Prepare and disseminate information for the benefit of licensees and the general public; and

(C) Employ an investigator to assist the commission.

The investigator shall carry an identification badge issued by the department of commerce and insurance and has the authority to make investigations concerning the enforcement of the laws, rules and policies promulgated under this part. The investigator shall have the authority to stop any auction activity that is being promoted, managed or supervised by unlicensed individuals in violation of this part.

(2) The commission shall not expend or commit sums pursuant to subdivision (l)(1) in an amount which would reduce the account to a balance of less than one hundred fifty thousand dollars (\$150,000).

(m) No state funds shall be expended to effectuate the provisions of this section other than the fees and charges set forth in this section.

SECTION 16.

(a) A nonresident of this state may become an auctioneer or apprentice auctioneer in this state by conforming to the provisions of this chapter, except that a nonresident auctioneer or apprentice auctioneer regularly engaged in the auction business as a vocation, and

maintaining a definite place of business in some other state, is not required to maintain a place of business in this state.

(b) (1) The commission may recognize a license issued by any other state to a nonresident auctioneer or apprentice auctioneer if the nonresident auctioneer or apprentice auctioneer is domiciled in the other state which issued the license, and if the other state reciprocates with Tennessee in like manner, and if the licensure requirements of such state include the passing of an examination of equal or higher standards than those required by this state.

(2) Such nonresident shall, however, be required to secure a license from the commission, which shall be issued upon application therefor, accompanied by the license fee required by this chapter and the filing of a certified copy of the applicant's license issued by such other state.

(c) Every nonresident auctioneer shall obtain a firm license and shall maintain an escrow account for all funds belonging to others that come into the nonresident auctioneer's possession as a result of an auction sale in Tennessee.

(d) Every nonresident applicant shall file an irrevocable consent that suits and actions may be commenced against such applicant in the proper court in the county in this state in which a cause of action may arise, in which the plaintiff may reside, by service of any process or pleadings authorized by laws of this state on the commission, or a deputy to be designated by it, the consent stipulating and agreeing that the service of such process or pleading shall be begun and held in all courts to be as valid and binding as if due service had been made upon such applicant in this state. The consent shall be duly acknowledged, and if made by a corporation, shall be authenticated by the seal of such corporation.

(e) (1) In case of any process or pleadings mentioned in this chapter being served upon the commission or upon a deputy to be designated by it, duplicate copies shall be made, one (1) of which shall be filed in the office of the administrative director of the commission, and the other

immediately forwarded by registered mail to the main office of the applicant against which the process or pleadings are directed.

(2) No default in the proceedings or action shall be taken unless it shall be made to appear by affidavit of a member of the commission, or a deputy designated by it, that a copy of the process or pleadings was mailed to defendant as herein required.

(3) No judgment by default shall be taken in any such action or proceedings within twenty (20) days after the date of the mailing of such process or pleadings to the nonresident defendant.

(f) The Tennessee auctioneer commission has the authority to impose any fee or licensing requirements on applicants for licenses from a reciprocal state that the reciprocal state imposes on Tennessee licensees by rule, regulation, policy, or law.

SECTION 17.

(a) Every person licensed under this chapter shall maintain a definite place of business in this state, except as hereinabove provided as to nonresidents, and shall erect and maintain a sign in a conspicuous place on the premises at or near the outside entrance to the principal office and all branch offices.

(b) (1) The sign shall be written in clear and legible letters of not less than two inches (2") in height, and shall clearly show the person's name and indicate that the person is an auctioneer or show the firm name and indicate that the firm is in the auction business.

(2) The sign shall be placed so that it can easily be observed and read by anyone entering the place of business. However, licensees maintaining a place of business in multistory office buildings shall be deemed to comply with this section if their names and professions are displayed on the directories of the building in the usual fashion and manner of other tenants therein located.

(c) (1) The commission may waive the requirements of subsections (a) and (b) in the event of a conflict with local ordinances, or other unusual circumstances.

(2) The commission has the authority to promulgate rules with regard to advertising auctions in Tennessee.

SECTION 18.

(a) No person engaged in the business of or acting in the capacity of an auctioneer or an apprentice auctioneer shall bring or maintain any action in the courts of this state for the collection of compensation for any services performed as an auctioneer or apprentice auctioneer without first alleging and proving that the person was a duly licensed auctioneer or apprentice auctioneer at the time the alleged cause of action arose.

(b) No apprentice auctioneer shall have the right to institute a suit in such apprentice auctioneer's own name for the recovery of a commission, fee or compensation for services as an apprentice auctioneer, but any such action shall be instituted and brought by the licensed auctioneer employing the apprentice auctioneer.

(c) Nothing contained herein shall be construed so as to prevent a licensed apprentice auctioneer from suing the apprentice auctioneer's employing auctioneer for any compensation, fees or commissions due the apprentice auctioneer from such auctioneer.

SECTION 19. The license of an apprentice auctioneer shall be automatically suspended upon the revocation or suspension of the license of the auctioneer by whom the apprentice auctioneer is employed. The apprentice auctioneer may retain the apprentice auctioneer's license by transferring to the employment of another licensed auctioneer within twenty-one (21) days of the effective date of such revocation or suspension.

SECTION 20. A violation of this part is a Class C misdemeanor.

SECTION 21. Any judgment obtained by a licensed auctioneer as the result of an action in the courts of this state for the collection of the sales price for goods or real estate sold by a licensed auctioneer or apprentice auctioneer may include an award for court costs and reasonable attorney's fees.

SECTION 22.

(a) Any person who desires to own and operate an auction house, auction barn, auction gallery, or any other type of auction operating at a fixed site for the purpose of selling consigned or purchased goods at a fixed location is required to first obtain a gallery license. If the gallery license holder operates more than one (1) auction, the licensee shall be required to obtain a branch license for each permanent location and pay the appropriate fees. If the auction house, auction barn, or auction gallery is owned and operated by a licensed auctioneer holding a valid firm license, no further license shall be required.

(b) A gallery license holder may sign consignment agreements, issue closing statements, and collect and disperse funds. The licensee must hire a licensed auctioneer to call bids at all auctions. The gallery license holder is responsible for all auction activities that take place on the auction site and may not conduct auctions off the designated site. A gallery license does not give the license holder the right to call bids or act as an auctioneer at any time.

(c) The person who desires to obtain a gallery license shall submit an application to the commission on the prescribed form. A person who desires to obtain a gallery license for a firm shall request issuance of the license in the name of the firm with a specific person acting as principal. The application shall demonstrate satisfactory proof that such person has:

(1) Reached eighteen (18) years of age;

(2) Successfully completed at least thirty (30) hours of classroom education approved by the commission; and

(3) Provided other information as the commission may require to demonstrate honesty, trustworthiness, integrity, reputation, and competency.

(d) Upon approval of the application by the commission, the applicant must take and successfully pass an examination prescribed by the commission. All examination fees are set by the commission.

(e) Applicants completing the requirements of this section shall be issued a license certificate and a pocket card. The license certificate shall be displayed in a conspicuous place where it can be examined by the public.

(f) The gallery license holder must comply with all of the requirements of Tennessee license laws and regulations that apply to all licensees.

(g) Licensees holding non-auctioneer firm licenses for the purpose of owning and operating an auction barn, auction house, or auction gallery may convert their non-auctioneer firm license to a gallery license at any time during a two (2) year period beginning July 1, 1999, and ending June 30, 2001, by requesting such change in writing without meeting any other requirements. No fee other than ordinary renewal fees shall be charged to convert licenses described in this section.

SECTION 23.

(a) (1) The administrative director and the investigator, acting on behalf of the commission, are authorized to issue citations against persons acting in the capacity of engaging in the auction business without a license in violation of this part.

(2) Each citation shall be in writing and shall describe with specificity the basis of each citation.

(3) Each citation shall contain an order to cease all violations of this part and an assessment of a civil penalty in an amount of not less than fifty dollars (\$50.00) nor more than two thousand five hundred dollars (\$2,500) for each violation.

(b) The commission shall promulgate rules and regulations to specify those conditions necessary to the issuance of a citation and the range of penalties for violations of this part.

(c) Service of a citation issued pursuant to this section may be made in person or by certified mail at the last known business address or residence address of the person cited.

(d) A citation issued pursuant to this section shall be issued by the administrative director or investigator within one (1) year after the act or omission which is the basis for the citation.

(e) Any person served with a citation pursuant to this section may appeal to the administrative director by written notice postmarked within fifteen (15) working days after service of the citation with respect to violations alleged, scope of the order or amount of civil penalty assessed.

(f) If a person cited timely notifies the administrative director that such person intends to contest the citation, the administrative director shall afford an opportunity for a contested case hearing pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(g) After all administrative appeals have been exhausted, the administrative director may apply to the appropriate court for judgment in an amount of the civil penalty, plus applicable court costs, and for an order to cease activities in violation of this part. The motion for the order, which shall include a certified copy of the final order of the hearing officer or administrative judge, shall constitute a sufficient showing to warrant the issuance of judgment and order.

(h) The commission may waive any or all of a civil penalty by stating the reasons for such waiver in the official minutes of the commission.

SECTION 24. In addition to the powers and duties otherwise conferred upon the commission herein, the commission is empowered to petition directly any circuit or chancery court having jurisdiction over any person in this state who is violating any of the provisions of this part, either with or without a license hereunder, to enjoin such person from continuing such violation, and jurisdiction is conferred upon the chancery and circuit courts of this state to hear and determine such causes.

SECTION 25. Tennessee Code Annotated, Section 4-21-607, is amended by deleting the language "real estate commission" and by substituting instead the language "real estate and auctioneer commission."

SECTION 26. Tennessee Code Annotated, Title 62, Chapter 19, is amended by deleting such Chapter in its entirety.

SECTION 27. This act shall take effect January 1, 2003, the public welfare requiring it.